

In re) Fair Hearing No. 15,128
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Appeal of)

The petitioner appeals a decision of the Department of Social Welfare that he was overpaid benefits in the ANFC and Food Stamp programs from January through September of 1997, because his wife's income was not reported or counted during that period. The issue is whether the petitioner's wife was a member of his household at that time.

1. The petitioner and his wife have been married for seventeen years and have five children, four of whom, aged three to thirteen, still live with them. The couple has had a sometimes stormy relationship and on occasion the wife has moved out of the home.

2. Sometime in late 1996, the petitioner was cut off of Social Security benefits which he had been receiving on account of physical and psychiatric disabilities. He appealed that termination and in the meantime he and his wife, who was then working, went to the Department of Social Welfare to discuss the family's eligibility for welfare benefits. They were told that they could not be eligible at that time with both parents in the house. They were told that the only way they could get benefits was if they lived

apart.

3. The petitioners claim that the worker advised them to move apart to get benefits. The worker denies this saying only that he gave them eligibility information but that he never gave them advice about what they should do and that he would not have advised anyone to contrive a separation to become eligible for benefits.¹ Both the worker and the petitioner and his wife were credible and sincere on this issue. The most likely occurrence, given this conflict, was that the worker did tell the petitioner and his wife that separation was a method to become eligible but that they misunderstood that information as a suggestion that they move apart solely to become eligible for benefits. No finding can be made on his evidence that the worker gave the petitioners the advice they now claim.

4. Lack of money in the household and mounting debt caused increasing stress for the petitioner and his wife. In January of 1997, the petitioner's wife moved out of their household both because she could not bear to be with him and endure the constant arguments over money and because she felt her absence would allow him to obtain welfare benefits

¹ The worker testified that the Group the petitioner was assigned to would actually have favored him working rather than splitting up with his spouse. He never explained what he meant by that given the fact that the petitioner was apparently found ineligible for ANFC on any basis prior to his wife's departure. It was also not made clear why the petitioner was not considered for incapacity benefits given his long history of receipt of Social Security disability benefits.

which might ease some of his tension.

5. The petitioner's wife went to live with a friend, the same friend she had lived with off and on during the prior three years when she had left the home due to marital difficulties, including her husband's assaultiveness. At first she did not tell her husband where she had gone because she was angry but soon called and gave him her phone number. The petitioner took only her clothing with her to her friend's home. She was not required to pay any rent but did help out with expenses. She stayed with this friend for the next nine months.

6. In February of 1997, the petitioner applied for and received ANFC benefits based on his statement that his wife was no longer in the household. He stated at the time of his application that he did not know where she was.

7. During the time that she lived with her friend, the petitioner's wife visited with her children at least two to three times in any given week depending on her work schedule and at times was able to visit daily. When she was with the children she helped them clean the house, plant the garden, played with them and took them to activities they were interested in and medical appointments. She and the children did the grocery shopping (using the husband's Food Stamps) and ran errands for the family because her husband rarely went out. She continued to pay all the household bills which were in her name, including the telephone and

the cable T.V. which she did not think her husband could afford but which she felt the children needed. She paid her own credit cards, car and insurance payments. She also bought the children clothes, and small gifts, particularly toys. The petitioner paid the other household expenses including rent and the cost of gas for the generator which they use for electricity and which is a major household expense. Both she and the petitioner made decisions regarding the lives of their children. Their personal relationship continued to be strained and the wife did not stay overnight except on very rare occasions, once or twice at most during the nine month separation.

8. In June of 1997, the Department received information indicating that the petitioner and his wife were not really separated and that the situation had been contrived. An investigator was assigned to the case who went to the petitioner's home at about 10:00 a.m. and was told by a daughter that her mother had been there that morning and had just left. He attempted to contact the petitioner's wife at her work and was informed that she works the night shift as a security guard. Sometime later, the investigator returned to the petitioner's home during the day and found his wife there caring for the children. The investigator talked to the wife who told him that she did not live there and gave her new address. He confirmed that she was receiving her mail at the new address. She

explained the situation, much as outlined above, and said she had left home due to their financial situation but hoped she would come back if her husband was able to get his Social Security restored. She was very blunt about the fact that she had left so the petitioner could get ANFC and that she believed she had been advised to do so by her worker. The investigator thanked her for her honesty and testified at hearing that he found her to be truthful but that he had to recommend "no absence" based on those facts.

9. On August 8, 1997, the petitioner was notified that his ANFC would cease as of September 1, 1997, because his children were not eligible for benefits. The Department later explained to the petitioner that the children were not categorically eligible because his wife was not absent from the home. In September of 1997, when the petitioner learned that his Social Security benefits had been reinstated, the Department agreed that the children had actually been categorically eligible during that time even if the wife had been present because the petitioner had now proven that he was disabled. However, the Department informed the petitioner that even though the family was categorically eligible the wife's income would have to be counted because they felt she had continued to be a household member from February through September of 1997. The petitioner vehemently disputes this assertion and will not agree to counting his wife's income.

10. In the beginning of October, 1997, the petitioner returned to her husband's home because she missed her children and because she believed that even with his Social Security, the family could not really live without her income. The testimony of the petitioner's wife is found to be entirely credible with regard to her establishing a separate residence from January through September of 1997. Furthermore, it is found that due to her obligation to contribute to expenses in her new residence and the fact that she did not reside with her children on a daily basis that they were deprived of a significant degree of financial and emotional support which they enjoyed when she was living in the household.

ORDER

The decision of the Department finding that the petitioner's wife resided in his household from January through September of 1997 is reversed.

REASONS

The issue in this appeal has changed since it commenced. This case is not about whether the petitioner's children were deprived of parental support due to the absence or incapacity of a parent, as it is, at least now, clear they were so deprived during the period at issue based on the petitioner's incapacity alone. It is, therefore, not

necessary to discuss the regulations involving "deprivation of parental support" found at W.A.M. § 2331 to resolve this matter.

The sole issue which has emerged here is whether the petitioner was required to report the income of his wife during the months of February through September when he received ANFC and Food Stamps. Under both of those programs, the income of parents of children receiving benefits who live together with those children in the same household must be reported and counted in determining benefits. W.A.M. 2242, 2250 and F.S.M. 273.1 (a)(2)(c), 273.9(b). The petitioner's wife's income is only reportable and countable if she was living together with her children in the same household from February to September of 1997.

The facts found in this case clearly indicate that the petitioner's wife had established a separate residence during the time at issue. The evidence is absolutely consistent that the petitioner moved out of her family residence and established another residence in the home of her friend at that time. Her motivation for moving out is not relevant except insofar as it might tend to cast suspicion on the actual establishment of a separate residence. Even if the facts established here that she moved out solely so her family could receive ANFC, that reason alone does not mitigate against a finding that she had indeed moved out if the facts supported it, although it

might certainly justify the Department's close scrutiny of the situation.

A close scrutiny of the situation shows that the petitioner's wife moved out for reasons in addition to a desire to see her family become ANFC eligible, namely marital discord. The petitioner's wife's usual life with her family was interrupted by her move--she no longer slept in their household, had to travel to visit her children, saw them less often than before and was required to spend money on a new living arrangement. The evidence shows that the petitioner operated out of her friend's house and received her mail there. There is no evidence that her move was contrived in the sense that she reported she had moved but actually continued to live in her household in just the way she always had. Even though the Department may not approve of a separation which admittedly was designed to achieve ANFC eligibility, that disapproval does not change a real separation into a sham.

Although it cannot be found that the worker per se advised the family to separate, the information conveyed to them over the course of the past year has been, to say the least, muddled. In fairness, their current predicament cannot be laid entirely at their feet. Questions remain as to why the family was not assessed for eligibility based on incapacity in late 1996; how the family would have been "better off" in a work program rather than separating, as

their worker said, if they were not eligible under the unemployed parent category; and why the couple was not also informed that any separation which occurred would also trigger an attempt by the Department to collect child support from the wife.² It is quite possible that a more careful handling of this case would have avoided this situation and the distress it may have caused to a family under a good deal of pressure already. In any event, as the petitioner and his wife actually separated, her income cannot be counted in determining the eligibility of the remaining assistance unit at this time and the Department's decision to the contrary, is reversed.

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² It is not clear why attempts to collect child support from the wife were not made, especially since such an action likely would have removed any purely financial reason for a separation. Of course, it is too late to pursue that remedy now.